FOR ARGUMENT

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 74-1589

GENERAL ELECTRIC COMPANY,
Petitioner,

v.

MARTHA V. GILBERT, INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO-CLC, et al.

No. 74-1590

MARTHA V. GILBERT, INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO-CLC, et al.,
Petitioners,

v.

GENERAL ELECTRIC COMPANY.

On Writs of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF FOR AMICUS CURIAE

School District of the City of Ladue

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Cases Cited

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INTEREST OF AMICUS CURIAE

School District of the City of Ladue, located in St. Louis County, Missouri, is a public school district organized, existing and operating pursuant to the laws of the State of Missouri.

Chapters 160-168 RSMo. The funds of the school district are derived from state aid and tax levies. Chapters 163 and 164 RSMo.

Pursuant to Section 168.122 RSMo.,[1] the school district has a sick leave policy which pays teachers their salaries while they are absent from work because of sickness or injury. The school district has never established a maternity leave policy. Teachers may leave work at any stage of pregnancy and may return to work whenever they feel able. Teachers are paid their salaries during absences caused by pregnancy-related illnesses, such as "morning" sickness, miscarriages or abortions. But absences during pregnancy and following childbirth which do not involve an illness or injury are not considered absences due to sickness or injury and, consequently, no salary is paid during such pregnancy-related absences.

The school district now has on appeal to the United States Court of Appeals for the Eighth Circuit the decision in *Liss v. School District of the City of Ladue*, 396 F.Supp. 1035 (1975). The district court found no difference between disabilities caused by illness and pregnancy-related disabilities not involving illness or injury, and held that the failure of the school district to pay the salary of Joy Liss, a school teacher, during her absence for birth of her child (she was not sick or injured) constituted sex discrimination within the meaning of Title VII of the Civil Rights Act of 1964, as amended. The appeal was argued and submitted in November 1975.

This Court's decision in General Electric Company v. Gilbert undoubtedly will determine finally whether the exclusion of pregnancy-related disabilities from coverage under sick leave plans

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[1] Section 168.122 RSMo. provides in part:

A board of education may establish policies for granting leave of absence, including sabbatical leave, maternity leave, sick leave, and military leave. * * *

constitutes sex discrimination proscribed by Title VII and, consequently, will control the decision in the *Liss* case, supra. The school district believes, therefore, that the interest of the public employer in the matter should be submitted for the Court's consideration and that the validity of E.E.O.C.'s extension of Title VII by guideline 1604.10 to pregnancy-related disabilities not involving sickness or injury should be dealt with specifically by the Court.

ARGUMENT

A. Interest of Public Employers.

The school district does not have any statistical information on the number of public employees now covered by health, temporary disability insurance or sick leave plans or the amount of public funds currently spent to finance those plans. However, we trust the Court will accept the fact that the numbers in both categories are large. If public employers are required to include maternity benefits in those plans the impact on public funds would be great. Public employers generally are restricted severely in raising operating funds and any public employer unable to obtain the additional necessary public funds to provide maternity benefits would have to abandon or curtail its existing employee sick leave or other plan. That would not be in the public interest because such plans have become an important and necessary ingredient of public employment in order to attract capable employees who usually can obtain larger incomes working for private business.

We hope, therefore, that the Court will want to find a strong and compelling justification for EEOC Guideline 1604.10 before permitting that guideline to impose its destructive effect on public employment and public employee benefit plans. And a much stronger justification than that provided by the deference courts usually give to administrative regulations and guidelines.[2]

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[2] If deference is to be a factor, we urge the Court to consider the decision of the legislature of the State of Missouri in Section 168.122 RSMo. 1969 that a sick leave plan without maternity benefits can be adopted and financed with public funds.

B. EEOC's Extension of Title VII to Require Coverage in Sick Leave Plans of Pregnancy-Related Disabilities, Not Involving Sickness or Injury, Is Unwarranted.

In order for this Court to decide that Title VII requires the inclusion in sick leave plans of pregnancy-related disabilities not involving sickness or injury, the Court must conclude that in Title VII Congress intended to create for women rights in addition to those guaranteed by the Fourteenth Amendment to the United States Constitution.

We know that the Fourteenth Amendment does not require the inclusion of such disabilities in sick leave plans in order to avoid sex discrimination. *Geduldig v. Aiello,* 417 U.S. 484. And we could find nothing in the legislative history of Title VII to indicate that Congress had anything in mind other than to provide an additional remedy to enforce rights guaranteed by the Thirteenth and Fourteenth Amendments to the Constitution. See House Report 92-238, 92d Cong., 2d Sess., U.S. Code Cong. and Admis. News, p. 2137, at p. 2154.[3]

Viewing Title VII as a remedial statute to enforce constitutional protection from discrimination, this Court needs to go no farther than its decision in *Geduldig v. Aiello,* supra, to strike down EEOC guideline 1604.10 insofar as it deals with pregnancy-related disabilities not involving a sickness or injury.

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[3] The clear intention of the Constitution, embodied in the Thirteenth and Fourteenth Amendments, is to prohibit all forms of discrimination.

Legislation to implement this aspect of the Fourteenth Amendment is long overdue, and the committee believes that an appropriate remedy has been fashioned in the bill.

Inclusion of state and local employees among those enjoying the protection of Title VII provides an alternate administrative remedy to the existing prohibition against discrimination perpetuated 'under color of state law' as embodied in the Civil Rights Act of 1871, 42 U.S.C. section 1983.

CONCLUSION

We urge the Court to consider the interest of public employers in this important matter and to conclude that pregnancy-related disabilities, at least those which do not involve a sickness or injury, are not required to be covered by sick leave plans in order to avoid the sex discrimination proscribed by Title VII of the Civil Rights Act of 1964, as amended.

Respectfully submitted,

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APPENDIX

APPENDIX A

SUPREME COURT OF THE UNITED STATES

Martha V. Gilbert, et al., petitioner and respondent, v. General Electric Company, respondent and petitioner.	Nos. 74-1589; 74-1590

Consent to File Amicus Curiae Brief

Martha V. Gilbert, et al. hereby consent to the filing of an amicus curiae brief by School District of the City of Ladue, a public school district located in St. Louis County, Missouri.

/s/ RUTH WEYAND
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Dated: July 8, 1976

APPENDIX B

SUPREME COURT OF THE UNITED STATES

Martha V. Gilbert, et al., petitioner and respondent, v. General Electric Company, respondent and petitioner.	Nos. 74-1589; 74-1590

Consent to File Amicus Curiae Brief

General Electric Company hereby consents to the filing of an amicus curiae brief held by School District of the City of Ladue, a public school district located in St. Louis County, Missouri.

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Dated: July 6, 1976